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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT
ABANDONED UNAVOIDABLY UNDER 37 CFR 1.137(a)**

Docket Number (Optional)

1310-2

First Named Inventor: Joseph E. Porcelli Art Unit: 3632
Application Number: 09/356,771 Examiner: Naschica S.
Filed: July 16, 1999 Morrison
Title: CAR AND TRUCK BEVERAGE HOLDER

Attention: Office of Petitions
Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

NOTE: If information or assistance is needed in completing this form, please contact
Petitions Information at (571) 272-3282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus any extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION.

NOTE: A grantable petition requires the following items:

- (1) Petition fee.
- (2) Reply and/or issue fee.
- (3) Terminal disclaimer with disclaimer fee – required for all utility and plant applications filed before June 8, 1995, and for all design applications; and
- (4) Adequate showing of the cause of unavoidable delay.

1. Petition fee

☒ Small entity – fee \$ 250.00 (37 CFR 1.17(l)). Applicant claims small entity status.
See 37 CFR 1.27.

☐ Other than small entity – fee \$ _____ (37 CFR 1.17(l)).

2. Reply and/or fee

A The reply and/or fee to the above-noted Office action in the form of _____ (identify the type of reply):

☒ has been filed previously on September 7, 2004

☒ is enclosed herewith. (New transmittal form for RCE)

B The issue fee of \$ _____

☐ has been filed previously on _____

☐ is enclosed herewith.

[Page 1 of 3]

This collection of information is required by 37 CFR 1.137(a). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 8 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

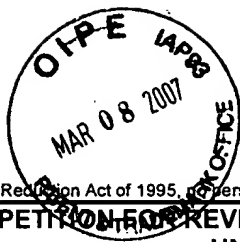
If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Best Available Copy

03/09/2007 RHEBRAFT 00000019 09356771

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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED
UNAVOIDABLY UNDER 37 CFR 1.137(a)****3. Terminal disclaimer with disclaimer fee**

- ☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. An adequate showing of the cause of the delay, and that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 CFR 1.137(a) was unavoidable, is enclosed.**WARNING:**

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

Signature

Thomas M. Galgano
Typed or printed name

20 W. Park Avenue - Suite 204
Address

Long Beach, New York 11561
Address

March 5, 2007
Date

27,638
Registration Number, if applicable

516-431-1177
Telephone Number

Enclosure ☒ Fee Payment

- ☐ Reply
- ☐ Terminal Disclaimer Form
- ☐ Additional sheets containing statements establishing unavoidable delay
- ☐ _____

CERTIFICATE OF MAILING OR TRANSMISSION (37 CFR 1.8(a))

I hereby certify that this correspondence is being:

☒ deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to **Mail Stop Petition**, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

☐ transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

March 5, 2007
Date

Signature

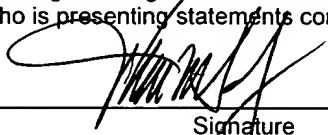
Thomas M. Galgano

Typed or printed name of person signing certificate

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED
UNAVOIDABLY UNDER 37 CFR 1.137(a)**

NOTE: The following showing of the cause of unavoidable delay must be signed by all applicants or by any other party who is presenting statements concerning the cause of delay.



Signature

Thomas M. Galgano

Typed or printed name

March 5, 2007

Date

27,638

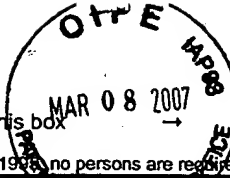
Registration Number, if applicable

(In the space provided below, please explain in detail the reasons for the delay in filing a proper reply.)

See attached Declaration In Support Of Petition For Revival
Of An Application For Patent Abandonend Unavoidably Under
37 CFR 1.137(A)

(Please attach additional sheets if additional space is needed.)

Please type a plus sign in this box



PTO/SB/05 (08-03)

Approved for use through 10/31/2002 OMB 0651-0032
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number

UTILITY PATENT APPLICATION TRANSMITTAL

(Only for new nonprovisional application under
37 CFR 1.53(b))

Attorney/Agent No.:
First Named Inventor:

Title:

Express Mail Label No.:

1310-2

Joseph E. PORCELLI

CAR AND TRUCK BEVERAGE HOLDER

EV 235846803 US

APPLICATION ELEMENTS

See MPEP chapter 6000 concerning design patent application contents

ADDRESS TO: Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

1. ☒ Fee Transmittal Form (e.g. PTO/SB/17)
(submit an original, and a duplicate for fee processing)
2. ☒ Applicant claims small entity status
See 37 CFR 1.27
3. ☐ Specification [Total Pages]
(preferred arrangement set forth below, MPEP 1503.01)
 - Descriptive Title of the Invention
 - Cross References to Related Applications
 - Statement Regarding Fed sponsored R&D
 - Reference to sequence listing, a table, or a computer program listing appendix
 - Background of the Invention
 - Brief Summary of the Invention
 - Brief Description of the Drawings (if filed)
 - Detailed Description
 - Claim(s)
 - Abstract of the Disclosure
4. ☐ Drawings(s) (37 CFR 1.152) [Total Sheets]
5. ☐ Oath or Declaration [Total Pages]
 - a. ☐ Newly executed (original or copy)
 - b. ☐ Copy from a prior application (37 CFR 1.63(d))
 - a. ☐ DELETION OF INVENTOR(S)
Signed statement attached deleting inventor(s) named in the prior appl., see 37 CFR 1.63(d)(2) and 1.33(b)
6. ☐ Application Data Sheet. See 37 CFR 1.76

7. ☐ CD-ROM or CD-R in duplicate, large table or Computer Program (Appendix)
8. ☐ Nucleotide and/or Amino Acid Sequence Submission (if applicable, all necessary)
 - a. ☐ Computer Readable Form (CRF)
 - b. Specification Sequence Listing on
 - i. ☐ CD-ROM or CD-R (2 copies or
 - ii. ☐ paper
 - c. ☐ Statements verifying identity of above copies

ACCOMPANYING APPLICATION PARTS

9. ☐ Assignment Papers (cover sheet & document(s))
10. ☐ 37 CFR 3.73(b) Statement ☐ Power of Attorney
(when there is an assignee)
11. ☐ English Translation Document (if applicable)
12. ☐ Information Disclosure Statement (IDS) PTO-1449 ☐ Copies of IDS Citations
13. ☒ Preliminary Amendment
14. ☒ Return Receipt Postcard (MPEP 503)
(Should be specifically itemized)
15. ☐ Certified Copy of Priority Document(s)
(if foreign priority is claimed)
16. ☐ Nonpublication Request under 35 U.S.C. 122
(b)(2)(B)(i). Applicant must attach form PTO/SB/35 or its equivalent.
17. ☒ Other: ...PTO-2038 Form for 3-mo EOT (\$475.00)

18. If a **CONTINUING APPLICATION**, check appropriate box, and supply the requisite information below and in a preliminary amendment, or in an Application Data Sheet under 37 CFR 1.76:

☒ Continuation ☐ Divisional ☐ Continuation-in-part (CIP) of prior application No. 09/356,771

Prior application information: Examiner: NARSCHICA S. MORRISON Group Art Unit: 3632

For **CONTINUATION OR DIVISIONAL APPS** only: The entire disclosure of the prior application, from which an oath or declaration is supplied under Box 5b, is considered a part of the disclosure of the accompanying continuation or divisional application and is hereby incorporated by reference. The incorporation can only be relied upon when a portion has been inadvertently omitted from the submitted application parts.

19. CORRESPONDENCE ADDRESS

☐ Customer Number or Bar Code Label (Insert Customer No. or Attach bar code label here) or ☒ Correspondence address below

Name	Galgano & Burke				
Address	300 Rabro Drive, Suite 35				
City	Hauppauge	State	New York	Zip Code	11788
Country	USA	Telephone	631-582-6161	Fax	631-582-6191
Name (Print/Type)	Thomas M. Galgano		Registration No. (Attorney/Agent): 27,638		
Signature			Date: September 7, 2004		

Burden Hour Statement. This form is estimated to take 0.2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington DC 20231.

F:\G&b\1310\2\UtilityPatentTransmittal.wpd

FEE TRANSMITTAL FOR FY 2003

Effective 01/01/200. Patent fees are subject to annual revision

☒ Applicant claims small entity status.
See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT \$860.00

Application Number:
Filing Date:
First Named Inventor:
Examiner Name:
Group Art Unit:
Attorney Docket No.:

Complete If Known

09/356,771
September 7, 2004
Joseph E. PORCELLI
Narschica S. Morrison
3632
1310-2

METHOD OF PAYMENT (check all that apply)

☐ Check ☒ Credit Card ☐ Money Order ☐ Other ☐ None

☒ Deposit Account:
Deposit Account Number: 07-0130
Deposit Account Name: Galgano & Burke

The Commissioner is authorized to: (check all that apply)

☐ Charge fee(s) indicated below
☒ Credit any overpayments
☒ Charge any additional fee(s) during the pendency of this application except for issue fee
☐ Charge fee(s) indicated below, except for filing fee to the above-identified deposit account.

FEE CALCULATION

1. BASIC FILING FEE

Large Entity Fee Code	Small Entity Fee Code	Fee (\$)	Fee (\$)	Fee Description	Fee Paid
1001	2001	770	385	Utility filing fee	\$385.00
1002	2002	340	170	Design filing fee	
1003	2003	530	265	Plant filing fee	
1004	2004	770	385	Reissue filing fee	
1005	2005	160	80	Provisional filing fee	

SUBTOTAL (1) (\$) \$385.00

2. EXTRA CLAIMS FEES FOR UTILITY & REISSUE

Extra Claims Fee from Fee Paid
Total Claims 4 - 20 ** = 0 x = 0
Independent Claims 2 - 3 ** = 0 x = 0
Multiple Dependent = 0

Large Entity Fee Code	Small Entity Fee Code	Fee (\$)	Fee (\$)	Fee Description	Fee Paid
1202	2202	18	9	Claims in excess of 20	
1201	2201	86	43	Independent claims in excess of 3	
1203	2203	290	145	Multiple dependent claim, if not paid	
1204	2204	86	43	**Reissue independent claims over original patent	
1205	2205	18	9	**Reissue claims in excess of 20 and over original patent	

SUBTOTAL (2) (\$) 0

**or number previously paid, if greater;
For Reissues, see above

FEE CALCULATION (continued)

3. ADDITIONAL FEES

Large Entity Fee Code	Small Entity Fee Code	Fee (\$)	Fee (\$)	Fee Description	Fee Paid
1051	2051	130	65	Surcharge - late filing	
1052	2052	50	25	Surcharge - late provisional filing fee or cover sheet	
1053	1053	130	130	Non-English specification	
1805	1812	2520	2520	For filing a request for <i>ex parte</i> reexamination	
1804	1804	920*	920*	Requesting publication of SIR prior to Examiner action	
1805	1805	1840*	1840*	Requesting publication of SIR after Examiner action	
1251	2251	110	55	Extension for reply within first month	
1252	2252	420	210	Extension for reply within second month	
1253	2253	950	475	Extension for reply within third month	475.00
1254	2254	1480	740	Extension for reply within fourth month	
1255	2255	2010	1005	Extension for reply within fifth month	
1401	2401	330	165	Notice of Appeal	
1402	2402	330	165	Filing a brief in support of an appeal	
1403	2403	290	145	Request for oral hearing	
1451	2451	1510	1510	Petition to institute a public use proceeding	
1452	2452	110	55	Petition to revive - unavoidable	
1453	2453	1330	655	Petition to revive - unintentional	
1501	2501	1330	655	Utility issue fee (or reissue)	
1502	2502	480	240	Design issue fee	
1503	2503	640	320	Plant issue fee	
1460	2460	130	130	Petitions to the Commissioner	
1807	2807	50	50	Processing fee under 37 CFR 1.17(q)	
1806	2806	180	180	Submission of Information Disclosure Stmt	
8021	28021	40	40	Recording each patent assignment per property (times number of properties)	
1809	2809	770	385	Filing a submission after final rejection 37 CFR §1.129(a)	
1810	2810	770	385	For each additional invention to be examined 37 CFR §1.129(b)	
1801	2801	770	385	Request for Continued Examination (RCE)	
1802	2802	900	900	Request for expedited examination of a design application	

Other fee (specify) _____

SUBTOTAL (3) (\$) 475.00

*Reduced by Basic Filing Fee Paid

SUBMITTED BY

COMPLETE (if applicable)

Name (Print/Type) Thomas M. Galgano

Registration No. 27,638

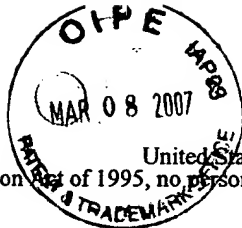
Telephone: 631-582-6161

Signature

Date September 7, 2004

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

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Approved for use through 01/31/2003. OMB 0651-0043
United States Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

PTO-2038 (02-2000)

UNITED STATES PATENT & TRADEMARK OFFICE

Credit Card Payment Form

Please Read Instructions before Completing this Form

Credit Card Information

Credit Card Type: ☐ Visa ☐ MasterCard ☒ American Express ☐ Discover

Credit Card Account #: [REDACTED] 009

Credit Card Expiration Date: September, 2004

Name as it Appears on Credit Card: THOMAS M. GALGANO

Payment Amount: (US Dollars): \$860.00

Signature: [Signature]

Date: September 7, 2004

Refund Policy: The Office may refund a fee paid by mistake or in excess of that required. A change of purpose after the payment of a fee will not entitle a party to a refund of such fee. The Office will not refund amounts of twenty-five dollars or less unless a refund is specifically requested, and will not notify the payor of such amounts (37 CFR 1.26). Refund of a fee paid by credit card will be via credit to the credit card account.

Service Charge: There is a 50.00 service charge for processing each payment refused (including a check returned "unpaid") or charged back by a financial institution (37 CFR 1.21(m)).

Credit Card Billing Address

Street Address 1: 300 Rabro Drive

Street Address 2: Suite 135

City: Hauppauge

State: New York

Zip/Postal Code: 11788

Country: USA

Daytime Phone #: 631-582-6161

Fax #: 631-582-6191

Request and Payment Information

Description of Request and Payment Information:

CONTINUATION APPLN. OFFICIAL FILING FEE AND
OFFICIAL FEE FOR 3-MONTH EXTENSION OF TIME

☒ Patent Fee

☐ Patent Maintenance Fee

☐ Trademark Fee

☐ Other Fee

Application No.

Application No.

Serial No.

IDON Customer No.

09/356,771

Patent No.

Patent No.

Registration No.

Attorney Docket No.

Identify or Describe Mark:

1310-2

If the cardholder includes a credit card number on any form or document other than the Credit Card Payment Form, the United States Patent and Trademark Office will not be liable in the event that the credit card number becomes public knowledge

TMG/jgg

F:\G&B\1310\2\credit.prelim.wpd



PATENT

DOCKET NO.: 1310-2

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT : JOSEPH E. PORCELLI
SERIAL NO. : ~~09/356,771~~
FILED : SEPTEMBER 7, 2004
FOR : CAR AND TRUCK BEVERAGE HOLDER
EXAMINER : NARSCHICA S. MORRISON
GROUP : 3632

PRELIMINARY AMENDMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

Preliminary to the initial Office Action, please amend the above-identified application as follows:

IN THE CLAIMS

Claims 1-17. (Previously Canceled)

Claim 18. (Currently Amended) A beverage container holder for round and square beverage containers, comprising:

a rectangular basket having four side walls, each having a top edge border which collectively define an open top end and which, in turn, defines a rectangular opening, at least two of said side walls disposed opposite one another each having at least two openings therethrough disposed beneath said top edge border thereof; and

at least four resilient fingers coupled to said rectangular basket and extending inwardly toward said rectangular opening, said at least four resilient fingers being V-shaped to define a point of a V and having a V-shaped profile when viewed in a vertical plane with the point of the V extending generally towards the center of the rectangular opening, said V-shaped fingers each defining an included obtuse angle therebetween, said at least four fingers each being made of a single unitary member cooperating to resiliently and releasably grasp both round and square beverage containers at the point of said V-shaped fingers, said fingers each depending from one of said top edge borders of said opposite side walls such that they each extend downwardly into a different one of said side wall openings; and

a generally U-shaped hook attached to and extending above said basket, wherein

said rectangular basket, said at least four resilient fingers and said generally U-shaped hook are formed as a single unitary member.

Claim 19. (Previously Canceled)

Claim 20. (Previously Amended) A beverage container holder according to Claim 18, wherein said single unitary member is plastic.

Claim 21. (Currently Amended) A beverage container holder for round and square beverage containers, comprising:

a rectangular tray having a top wall having a pair of spaced-apart rectangular openings; and

at least two sets of four resilient fingers coupled to said rectangular tray and said fingers of each set extending inwardly toward a different one of said rectangular openings, said resilient fingers being V-shaped to define a point of a V and having a V-shaped profile when viewed in a vertical plane with the point of the V extending generally towards the center of the respective rectangular opening, said V-shaped fingers each defining an included obtuse angle therebetween, said at least four fingers of each set cooperating to resiliently and releasably grasp both round and square beverage containers at the point of said V-shaped fingers, said fingers each depending from said top wall of said tray[, said rectangular tray and] said [at least two sets of four] resilient fingers are each formed as a single unitary member; and

a supporting member rotatably coupled to said rectangular tray and being pivotable into a position located below said rectangular opening.

Claim 22. (Previously Added) A beverage container holder according to Claim 21, further comprising:

spring means for biasing said supporting member to said position located below said rectangular opening.

Claim 23. (Previously Canceled)

REMARKS

Reconsideration and withdrawal of the final rejection is respectfully requested in view of the foregoing amendments and the following remarks.

Concerning initially the 112 rejection, by this Preliminary Amendment, the recitation in Claim 21 relative to the two sets of four fingers and the rectangular tray being formed of a single unitary member has been deleted. The resilient fingers are each now defined as being formed "as a single unitary member". Claim 18 has been appropriately amended to define each of the four fingers being made of a single unitary member, as well.

In addition, Claims 18 and 21 have been further amended to define the V-shaped fingers as each defining an obtuse angle therebetween, support for which can be seen in Fig. 1. This obtuse angle allows the fingers to be depressed more easily by the cup being inserted into the holder. As will be discussed in greater detail hereinafter, it is respectfully submitted that the prior art neither discloses nor suggests this novel combination of features.

At the outset, Applicant wishes to bring to the Examiner's attention a recent article in Newsday dated May 31, 2004, in which there was reference to the fact that it was difficult to "try jamming one of those square bottles into your car's

cup holder". This merits attention since it goes to the issue of the present invention that current cup holders are not designed to hold both round and square containers. It is respectfully submitted that it is only through hindsight reasoning that the prior art can be constructed in such a fashion as to duplicate Applicant's invention. In any event, the prior art relied upon by the Examiner does not disclose or suggest the invention as now claimed.

In particular, as noted above, the claims now define the use of V-shaped resilient fingers made of one piece which define an obtuse included angle. On the other hand, the German reference discloses fingerse having an included acute angle. The obtuse angle and the provision of V-shaped fingers in this form allow for a more gradual displacement thereof when the cup is inserted. The use of both the integrally formed resilient fingers, each having a V-shaped profile with an obtuse included angle is neither disclosed nor suggested by the references relied upon by the Examiner either applied alone or in combination.

Finally, Applicant hereby requests a three-month extension of time in which to respond to the outstanding Office Action. Credit Card payment form PTO-2038 in the amount of \$475.00 is enclosed to cover the official filing fee. Any fee deficiency or overpayment may be charged or credited to applicant's Deposit Account No. 07-0130.

Accordingly, reconsideration and withdrawal of the rejection and allowance of the claims at an early date is earnestly solicited.

Respectfully submitted,

JOSEPH E. PORCELLI



Thomas M. Galgano
Registration No. 27,638
GALGANO & BURKE
Attorney for Applicant

Date: 9/7/04

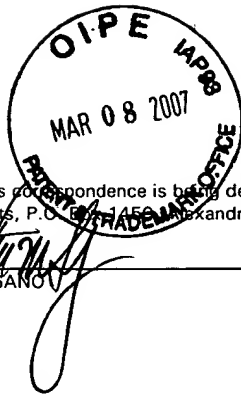
300 Rabro Drive - Suite 135
Hauppauge, NY 11788
Tel: (631) 582-6161
Fax: (631) 582-6191

TMG/kdd
F:\G&b\1310\2\preliminaryamend.wpd

Enclosure: PTO Form 2038



EXHIBIT A



I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313 on the date identified below.

By:

THOMAS M. GALGANO

Date:

3/5/07

PATENT

DOCKET NO.: 1310-2

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT : JOSEPH E. PORCELLI
SERIAL NO. : 09/356,771
FILED : JULY 16, 1999
TITLE : CAR AND TRUCK BEVERAGE HOLDER

**DECLARATION IN SUPPORT OF
PETITION FOR REVIVAL OF AN APPLICATION FOR
PATENT ABANDONED UNAVOIDABLY UNDER 37 CFR 1.137(A)**

I, Thomas M. Galgano, do hereby declare:

1. I am the attorney of record for the above-identified Applicant in connection with the above-identified application and I submit this Declaration in support of the Petition for Revival of the above-identified application filed concurrently herewith.

2. A final Office Action in the above-identified application issued on March 4, 2004. On September 7, 2004 Applicant submitted a continuation application together with a Preliminary Amendment and the fee for a three month extension of time (copy attached hereto as Exhibit A).

3. Applicant subsequently received a postcard receipt from the U.S. Patent and Trademark Office indicating that the application had been received on September 7, 2004 and assigned Serial No. 10/935,503 (copy attached hereto as Exhibit B).

4. On July 12, 2005, I received a telephone call from Shirley Steel of the U.S. Patent and Trademark Office regarding the continuation transmittal form that we filed. She indicated that it was improperly entered as an amendment and she needed to correct it. I pointed out to her that there was a final Office Action and we filed a continuation with a three month extension which was mentioned in the transmittal papers and in the Preliminary Amendment. She indicated that on this basis, she would try to expedite the handling of this case and pass it through to the Tech Department for processing.

5. I subsequently received in the mail a Notice of Corrected Application number dated July 13, 2005 indicating that the above-identified application was incorrectly assigned to 09/356,771 and that the U.S. Notice assigning it the number


of 10/935,503 had been vacated (copy attached hereto as Exhibit C). The Notice further indicated that a new filing receipt would be mailed in due course.

6. I subsequently had my office conduct status inquiries into this application and on October 31, 2006 our office was informed by Mrs. Holmes (nee Ms. Steel) that she would e-mail Examiner Shamika Sanders Morrison at Art Unit 3632 and tell her that all correct papers were sent in and that they had originally given us an incorrect serial number.

7. In December, 2006 and January, 2007, my office made further inquiries and we were informed that the case went abandoned for failure to use the proper transmittal form and that it would be necessary to file a Petition to Revive.

8. Under the above circumstances, it would appear that although there was a minor mistake with respect to the transmittal form used with filing the RCE application, Applicant's attorney was subsequently informed by the PTO that the papers were sufficient for filing purposes and not until recently was it learned that the PTO had subsequently reached the opposite conclusion.

9. In view of the above, it is believed that Applicant has shown good cause for revival of the application and to accord the filing of the RCE application, and such action at an early date is earnestly solicited.



Thomas M. Galgano, Esq.

TMG/jgg

Enclosures: Exhibits A, B, and C

F:\G&b\1310\2\declarationtmg.wpd

EXHIBIT B



RECEIVED IN MAIL ROOM OF PATENT OFFICE:

17497 U.S. PTO
10/935503

APPLICANT : JOSEPH E. PORCELLI
SERIAL NO. : 09/356,771
FILED : SEPTEMBER 7, 2004
FOR : CAR AND TRUCK BEVERAGE HOLDER
EXAMINER : NARSCHICA S. MORRISON / GROUP: 3632



Papers sent:

Utility Patent Application Transmittal for Cont. Appln. (PTO/SB/05)
with Express Mail Cert. No. EV 235846803 US dated 9/7/04
Fee Transmittal (PTO/SB/17) dated 9/7/04
Preliminary Amendment dated 9/7/04
Credit Card Payment Form PTO-2038 for \$860.00

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dd 9/4/2004(weekend)

Docket: 1310-2

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EXHIBIT C



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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
10/935,503	09/07/2004	JOSEPH E. PORCELLI	1310-2

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07/13/2005

NOTICE OF CORRECTED APPLICATION NUMBER

Through an administrative error, the above identified application number was assigned to your application. The correct application number is **[09/356,771]**. Please refer to the new application number in all future correspondence to the Office.

All notices mailed in application **[10/935,503]** have been vacated. A new filing receipt will be mailed for **[09/356,771]** in due course.

The Office regrets any inconvenience this has caused. Please direct any questions or inquiries to Customer Service at (703) 308-1202.


Office of Initial Patent Examination



**NEW TRANSMITTAL FORM
FOR
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